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ABSTRACT

Hiring discrimination, or the use of information in employee selection which is invalid in its ability to predict satisfactory performance, results in the rejection of qualified applicants and the acceptance of unqualified applicants. The Supreme Court, in "Griggs v. Duke Power Company," ruled that applicants must be rated on the basis of skills related to job performance and not on the basis of general credentials such as a high school diploma. The development of valid tests for all social groups is expensive but essential to fair hiring practices. The cost might well be low compared to the present cost in wasted human resources. As an interim solution, enforcement agencies must be given sufficient staff and authority to investigate employers without waiting for complaints by employees. (Author/BH)

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# DISCRIMINATORY HIRING PRACTICES

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Occasional Paper No. 6

# DISCRIMINATORY HIRING PRACTICES

by

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Metropolitan Studies Program
Maxwell School, Syracuse University
April 17, 1972

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# FOREWORD

Occasional Paper No. 6 represents the final report of a research project carried out during 1970-71 by the Metropolitan Studies Program, supported by the Office of Vocational Education of the New York State Department of Education. The original study subject was defined in this manner: "A study to determine how to eliminate discriminatory hiring practices that prevent trained individuals from entering the world of work at their level of capacity." The findings are sufficiently clear and important enough that they deserve dissemination in this format to interested people around the country.

Professor H. George Frederickson, Associate Director of this Program, was the director of the study. His associates were Assistant Professor David Greytak, Department of Economics, and Mr. Richard Morelli, graduate student in the Department of Political Science.

Guthrie S. Birkhead
Director

April 7, 1972

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## SUMMARY

We have defined hiring discrimination as the use of information in employee selection which is invalid in its ability to predict satisfactory performance. This causes rejection of qualified applicants and (perhaps) acceptance of unqualified applicants. We have suggested that the optimum level of a skill or set of skills for a given job might be less than the maximum--i.e., people can be over-qualified as well as under-qualified.

The Supreme Court, in Griggs V. Duke Power Company, ruled that applicants must be rated on the basis of skills related to job performance and not on the basis of general "credentials" such as a high school diploma. This may well be the beginning of an attack on the fairness of the credentialism in our society which regularly denies access to good jobs to those not fortunate enough to have obtained the credential but who do possess the necessary abilities.

As a substitute for often meaningless credentials, employers must have access to means of measuring ability and predicting job success. Rewards and punishments must be applied to secure equitable use of such tests by making the costs of non-compliance higher than the benefits. Employers must be educated concerning their own self-interest in hiring practices.

The development of valid tests for all social groups is an expensive and time-consuming propostion but is essential to fair hiring

practices. The cost might well be low compared to the present cost in wasted human potential due to under-employment and unemployment. While we are waiting for major improvements in test validation, agencies charged with enforcing violations of the Civil Rights Act and similar statutes in the states must be given sufficient staff and authority to investigate employers and industry-wide practices without waiting for employees to file complaints.

The costs of fairness may well be high, but the cost of continued inequities--both human and monetary costs--seem to be much higher. The logical choice seems clear.

This report is an attempt to arrive at realistic recommendations on ways to eliminate practices that prevent qualified individuals from being hired at their level of ability. The report limits its focus to the initial hiring of applicants upon their entering the world of work, as opposed to promotion or transfer hiring.

In arriving at recommendations it is necessary to define terms, to look at barriers that prevent qualified people from being hired, and to make the recommendations for change according to our understanding of the dynamics of the change processes involved.

## I. HIRING DISCRIMINATION: TOWARD DEFINITIONS AND A MODEL

We shall begin by defining discrimination -- in the light of relevant legislation, administrative guidelines, and court interpretations.

### Legislation

Section 703 (a), Title VII of the Civil Rights Act of 1964 states that:

> It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions , or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees in any way which would deprive . . . any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Section 703 (c) provides:

> It shall be an unlawful employment practice for a labor organization (1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin. . . .

In New York state discriminatory hiring practices are made illegal by the Human Rights Law, Section 291:

> The opportunity to obtain employment without discrimination because of race, creed, sex, color or national origin is hereby recognized as and declared to be a civil right.

Nowhere in law is discrimination clearly defined such that its existence can be measured or determined. Lawmakers have apparently left that task up to administrative agencies and the courts. Since discrimination has a very subjective element to it, and since much of it is unconscious or built into the "system" of manpower allocation, it is very difficult to say with certainty that it exists or does not exist -- whether hiring requirements are realistic or not.

Administrative Guidelines

The major guidelines in this area have been furnished by the Equal Employment Opportunity Commission (EEOC). Excerpts from a few of the current sections of those guidelines follows (see also Employment Practices, Commerce Clearing House, Inc., 1970, p. 7319):

> Sec. 1607.1. STATEMENT OF PURPOSE.
>
> (a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by Title VII. . . .

> (b) An examination of charges of discrimination . . . has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases . . . candidates are selected or rejected on the basis of a single test score. Where tests are used, minority candidates frequently experience disproportionately high rates of rejection. . . .

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence on support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by Title VII may result in the rejection of many who have necessary qualifications for successful work performance.

Sec. 1607.2. "TEST" DEFINED

> . . . the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision.

Sec. 1607.3. DISCRIMINATION DEFINED

> The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion promotion procedures are unavailable for his use.

Sec. 1607.4. EVIDENCE OF VALIDITY

> (a) Each person using tests to select from among candidates for a position or for membership shall have available for

inspection evidence that the tests are being used in a manner which does not violate Sec. 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) Attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

Sec. 1607.5. MINIMUM STANDARDS FOR VALIDATION

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street N.W., Washington, D.C. 20036.

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. . . .

(2) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described. . . .

(3) The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(4) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See Sec. 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The nagnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful.

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful.

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful.

Sec. 1607.8. ASSUMPTION OF VALIDITY

(a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity.

Sec. 1607.9. CONTINUED USE OF TESTS

. . .It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

Sec. 1607.11. DISPARATE TREATMENT

Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by Title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

Sec. 1607.13. OTHER SELECTION TECHNIQUES

Selection techniques other than tests, as defined in Section 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

Sec. 1607.14. AFFIRMATIVE ACTION

> . . . the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by Title VII.

Court Interpretations

The validity and usefulness of the legislative and administrative definitions were brought into sharper focus recently by a decision by the U.S. Supreme Court in Griggs vs. Duke Power Company. (See Appendix) The court declared that what is required by Congress, as expressed in Title VII of the Civil Rights Act of 1964, ". . . is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other inpermissible classification.

". . . [A]bsence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability.

"Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

". . . any test used must measure the person for the job and not the person in the abstract."

This is a very powerful prescription laid down by Congress and as interpreted by the Supreme Court. It calls into question the use of many education and other credential requirements in many occupations. It makes necessary the creation of tests (paper-and-pencil or otherwise)

to predict performance on the job where a high school education or other credential cannot be shown to be necessary. According to the Equal Employment Opportunity Commission such tests must be valid for all groups protected by Title VII.

The relevant legislation, administrative guidelines on the court interpretations of what constitutes discrimination in hiring practices leaves a good deal to be desired in terms of both precision and capacity for being made operational. We now present a definition of discrimination and a "model" for assessing discriminatory hiring practices that comprehends the relevant legislation, administrative guidelines and the court cases yet is somewhat more precise.

A Definition of Discrimination

Hiring an individual for a particular position from outside or inside an organization requires a decision on whom to select from among those that might wish to be employed. The job to be performed can be considered to require certain abilities, skills, and personality characteristics for "satisfactory" and for "desirable" performance. Individuals who wish to be employed in a given occupation possess an infinite variety of combinations of skills, skill levels, potentials, and other personal qualities. Those who must choose the people who will receive offers of employment are faced with the task of predicting future performance based on information available in the present. Of course such predictions can never be perfect, but we can assume this to be the immediate goal. The long-range goal for an organization is its own health, survival, and growth in an environment influenced by economic,

social, and political elements. This would include business, governmental bodies, and other organizations that employ people. Optimum performance of individuals would seem to be an important part of ensuring the long-range goal. However, we must allow for the fact that some persons in organization will choose knowingly to sacrifice ideal conditions in order to serve personal biases and short-range convenience.

If we assume that good job performance is desired, we can assume motivation to predict performance. Information used for this is of many types including school success, job success, interview scores, paper-and-pencil test scores, race, age, sex, and many others. In order that information may be useful to predict, it must be related to future performance. This creates many problems for the employer: First, performance is often difficult to measure, and detailed records are costly to maintain. Second, when a job is created, selection criteria must be chosen and used without knowing beforehand whether they are valid. Third, in order to test validity it would be necessary to employ people who do not meet minimum standards and compare their performance with that of persons who do meet the standards. Unless standards are raised from what they previously had been, such comparison is impossible without hiring some who do not meet current minimum standards. Employers are reluctant to change standards that seem to provide an acceptable proportion of people who perform satisfactorily. Thus it is difficult to ascertain which items of information about an individual are valid predictors. Use of information that is invalid as a predictor, however, we have defined as "discrimination." It is therefore difficult for many employers to determine whether their

selection methods discriminate.

In addition to being related to future performance, a non-discriminatory selection criterion must have some logical, causal relation to future performance. It may well be, for example, that race is rather highly correlated with future performance in certain kinds of occupations. However, there is no logical, causal relationship between skin color and performance. Factors such as "White middle-class values" and formal education might well account for differential performance (i.e., they are more logically related to performance) since they are related both to racial heritage and possibly to job success. The non-discriminating information then <u>might</u> be formal education and values. The definition of 'discrimination" we shall use is as follows:

The use of any information about an individual which adversely or favorably affects hiring, promotion, transfer or any other employment or membership opportunity constitutes discrimination UNLESS the information evidences a high degree of utility in its ability to predict (i.e., is highly correlated with and logically related to) important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated. The validity of any information used to predict job performance must be demonstrated, when technically feasible, for each group protected by Title VII of the Civil Rights Act of 1964 as amended (such groups being defined by "race, color, religion, sex, or national origin") if such information is to be used to refuse employment, to discharge any individual, or to affect terms, conditions, or privileges of employment for that group.

Demonstrated validity of prediction ability must be highest when (1) a high proportion of applicants are placed on the job; (2) a high proportion of applicants not selected on the basis of the information become satisfactory employees; (3) there are small economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant.

Note that the definition includes the use of information which "adversely or favorably" affect hiring, etc. Invalid information that adversely affects these things we shall call "direct" discrimination. Invalid information that favorably affects hiring we shall call "indirect" discrimination since a job given to a person for "no valid reason" denies a job to someone with perhaps a higher probability of success.

"Objective" measures such as test scores must also be demonstrated to be valid for each group protected by Title VII of the Civil Rights Act of 1964. This is necessary to insure against ethnic, racial, or religious (i.e., "cultural") bias in the test. Cultural factors may affect test results in ways not related to the probability of job success.

A Model of Discrimination in Hiring

The model of discrimination which follows is composed of two continuous variables: "Pre-Hire Qualifications" (a weighted average of all factors) and "Performance After Hire" (also a weighted average). While numerical weights and average "scores" may not be used by most employers in assessing Pre-Hire Qualifications, one could conceive of such a process being devised by an employer based upon his "objective" and "psychological"

(hunch or liking) evaluation of an applicant. If such scales are not set on paper, we shall assume for our purposes that they exist in the minds of hiring and other personnel officers. At some point on this continuum the employer defines a point below which he would be disposed to reject an applicant. This we shall call the "acceptability level." In like manner we shall assume that an employer has a set of "objective" and "subjective" standards by which he measures performance and assesses potential for future performance (growth) on the job or in the organization. Some over-all assessment is made about whether the performance is "satisfactory." This we shall call the "satisfactory level."

In the Figure 1 the "acceptability" and "satisfactory" levels are represented by intersecting lines creating 4 "zones." A job applicant must fall into one of the four zones. It is very difficult, however, to place a person in zone 3 or zone 4 since the person was not hired. However, the research done in similar organizations might indicate probabilities of the person falling on either the "satisfactory" or "unsatisfactory" side of the performance continuum. A person falling on the "satisfactory" side is defined as an object of discrimination since the employer did not use the best means available to him to assess the qualification of the applicant (the means used to choose between zone 3 and zone 4).

Without organized labor an employee whose performance was below the Satisfactory Level yet still an asset would be fired -- provided someone more promising were available to replace him. If he were a liability the organization would not need a replacement before firing him. However, with a labor organization or civil service system to deal with, the

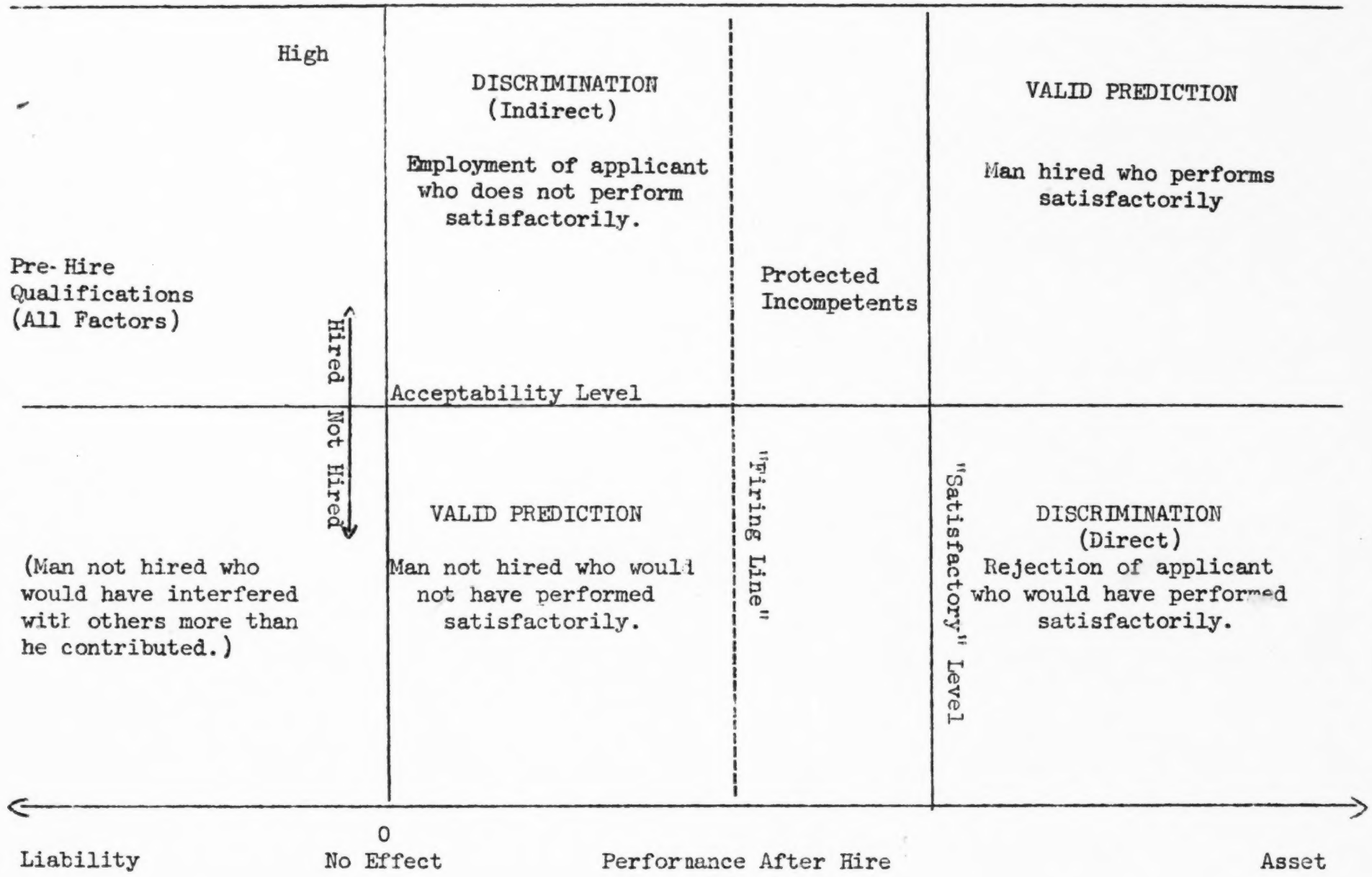


Figure 1. A MODEL OF DISCRIMINATION Defining Discrimination as Prediction Error: Pre-Hire Qualifications vs. Performance After Hire.

employer may be required to retain the employee in spite of unsatisfactory performance as judged by the immediate employing organization. The performance as judged by the immediate employing organization. The performance level below which the employee organization or civil service system would not defend an employee is called the "Firing Line" on the figure. The firing line may be in either the "asset" or the "liability" side of performance. The space between the "satisfactory" level and the "firing line" we shall call the "Protected Incompetents" area. If hired, persons in this area are actual; if not, they are potential. The actual people in the "Protected Incompetents" area are caught in disputed territory between employer and employee organizations.

A given means of assessing qualifications and of assessing performance yields a scattering of individuals on the graph. If there is a fairly uniform scattering, the assessment of qualifications is worthless as a means of helping predict job performance. If there is a tendency toward a linear relationship (not horizontal or vertical) it can be used to predict. The stronger the relationship the more valid the prediction can be (i.e., the fewer errors will be made). The ideal case is represented by a regression line, similar to "A" in Figure 2, which passes through the intersection of the "acceptability level" and the "satisfactory level." A line similar to "B"which crosses the "satisfactory level" below the 'acceptability level" indicates that requirements are too high or that due to conditions of the job market the employer is seeking superior performance. There is some evidence that there exist qualification standards which relate to performance as in line "C." In this case, those

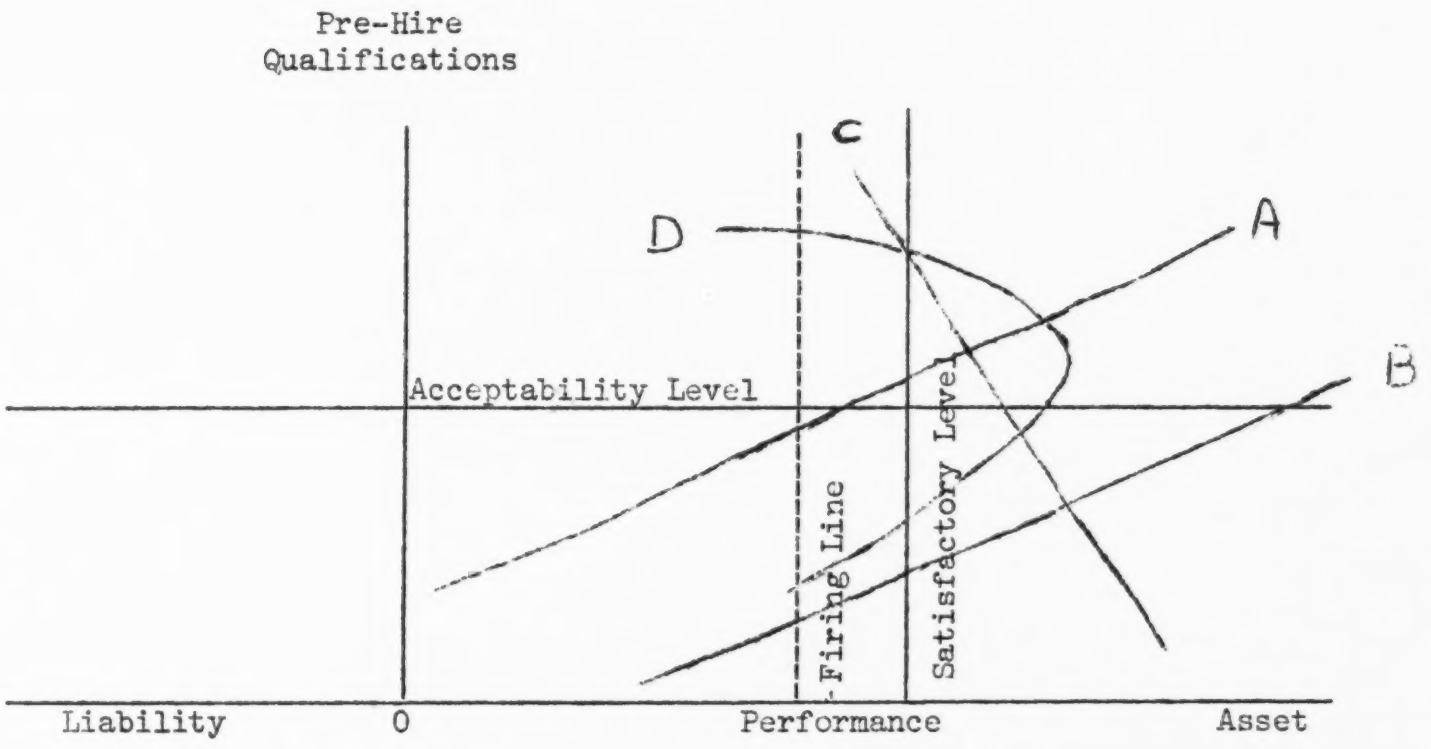


Figure 2: Types of Regression Line

assumed to be more qualified are actually less qualified as measured by productivity. An example is the use of education level (such as a high school diploma) to predict performance in unskilled jobs. In many jobs people with less education are less likely to become bored and indifferent to the work and thus become better producers.

Perhaps for many jobs and hiring criteria reality approaches a line similar to "D" in which there is an optimal balance of pre-hire qualifications in terms of job performance. One hired with lower qualifications would be unable to do the work, while one hired above this optimal level would become bored and less productive.

The above model is a useful conceptual and heuristic device for aiding and understanding of the discrimination concept and for suggesting where we should look for ways to reduce discriminatory practices.

Other Definitions

Training: (n) Any past experience of an individual which are important for satisfactory work behavior. Such experiences may or may not be essential to satisfactory behavior.

Trained: A person shall be considered "trained" for a job if he possesses training sufficient for satisfactory work performance. Some persons may be "better" trained than others, and some may possess different kinds of training from that of others. The criterion is whether the amount and kind meets the minimum sufficient for satisfactory work behavior. A "trained" individual is not automatically "acceptable" for employment even in an organization with highly valid ways of predicting work performance. Other valid factors in predicting job performance are also involved for some occupations -- such as attitude, motivation, and interpersonal skills.

Hiring Procedures: Practices used by an organization which (a) determine those persons to be considered for employment, and (b) select the persons to be offered employment from among those considered.

Either part (a) or (b) of an organization's hiring procedures may prevent trained and acceptable persons from being employed. Procedures which systematically exclude qualified people may be intentional or unintentional. The physical location of an employment agency, for example, excludes those who cannot or would not go there to seek employment.

## II. RESEARCH AND FOLLOWUP STUDIES ON EMPLOYMENT DISCRIMINATION

With this definition and its legal underpinnings as a guide, we review the present literature -- exploring the barriers that prevent qualified people from being hired, and extracting recommendations for change based on the dynamics of the change processes involved. A complete annotated bibliography is found in Appendix 2; a discussion of the most important sources is outlined here. The discussion is broken into two parts: first, a review of available data as sources of information on the existence of discrimination; second, a review of the prime theoretical and empirical studies.

### A. "Discrimination" and Available Data

The data available from government census and other sources are not adequate to determine if discrimination exists. To make this determination, a number of data requirements must be met. First, valid and invalid job requirements need to be established. "Ideal" employee characteristics need to be distinguished from minimum characteristics for adequate performance. Next, valid and logically-related predicting information about job applicants needs to be developed. Other information not related to valid predictors should not be requested from the applicants (such as race or religion).

Some of the most commonly used means for demonstrating the existence of discrimination are comparisons of white and non-white employment in a certain occupation or occupational group (or comparisons of young

and old, male and female, etc.). Percentages are expressed in several ways: 1) the percent white and non-white (male and female, etc.) of the total employed in that occupation, or 2) the percent of all white workers in that occupation versus percent of all non-white workers in the occupation. Sometimes the percent non-white in the relevant labor market population is also given for comparison with percent non-white in the occupation. While we may agree that in the absence of discrimination a proportionate share of all minority or other groups would be represented in all types of jobs, we have with us the effects of discrimination in the past. While it may be true, for example, that education is not so necessary for many jobs as many employers indicate, it is also true that education often is a relevant requirement and that blacks have received inferior educational opportunities in the past. Our definition of discrimination is not an implied quota system -- it involves real abilities and aptitudes matched to real job requirements. If the proportion of blacks in an occupation in a given community is less than the proportion of blacks in the community, several factors could account for this other than discriminatory hiring practices. As we have mentioned, perhaps the job requires a relatively high degree of skill in a technical field (such as engineering) or in verbal ability. The proportion of blacks with the needed skills might well be less than the proportion of whites. Employers might be encouraged to begin training programs to teach needed skills to promising applicants, but this goes to positive attempts to reduce social injustice by compensating for past discrimination. In the long run this approach might be beneficial to industry -- and even in the

short run when skilled labor is scarce, -- but it goes beyond merely eliminating discriminatory hiring practices.

Another reason for a low proportion of blacks in an occupation might be that many of those who would be qualified by valid measures have been offered positions for which they were only marginally qualified in order to be trained or in order to satisfy pressures for a quota at that more highly skilled occupation.

Yet another reason for a relatively low amount of black employment might be mainly a relatively low number of black applicants. Several things could account for this: 1) the company does not deal fairly and honestly with blacks, and the word has spread; 2) the company <u>is</u> fair, but blacks have been conditioned not to consider employment in that field due to past discrimination or present discrimination by other employers in the industry; 3) employment would mean working with nearly all whites and exposing oneself to racial slight or worse from co-workers; 4) the means of selecting applicants might be loaded against blacks -- as when job openings are posted in an employment office in white communities only.

There is clearly a distinct need for improved means of measuring discrimination and for a collection of data concerning it. Most of the weakness of existing data comes from failure to control for competing explanations of data that appear to reveal discrimination. We have said that discrimination exists when an employer chooses employees based on information about an applicant which is unrelated to the probability

of his performing satisfactorily on the job. Since we cannot explore inside the employers head (or his agent's head), we must assess the results of his choice of employees from among the applicants for the job. Under ideal circumstances an employer 1) will have the most valid means yet devised at his disposal for selecting the applicant most likely to succeed; 2) will try continually to improve his ability to predict; 3) will not seek information about an applicant which he does not intend to use to select employees. (This should reduce unconscious bias and remove the appearance of discrimination.) 4) will apply his selection criteria in such a way that everyone is treated equally; and 5) will offer employment first to those most likely to perform satisfactorily. (Note this does not mean the offer should go first to the individual with the highest education or special skill level since a moderate level of education and/or skill might be more highly related to satisfactory performance on the specific job being offered. That is, "over-qualified" people should be avoided if more ideally qualified people are available.)

A measure of discrimination could begin with ways to quantify an employer's degree of departure from the above "ideal" circumstances:

1. A measure of the degree to which selection criteria are invalid. Invalid criteria will result in offering jobs to persons other than those most likely to perform satisfactorily. Perhaps applicants could be rated by someone other than the employer and results compared with the employer's decision to hire or not to hire.

2. A measure of failure to attempt improvement of selection criteria. Adequacy of records could be judged in terms of the employer's

ability to assess validity of selection methods.

3. A measure of requests for information from applicants which is not related to probability of job success.

4. A measure of inequality of application of the valid selection method. Are some people refused permission to apply? Is the application procedure for some made unnecessarily difficult?

5. A measure of whether the employer offers employment first to the individual(s) most likely to perform well. Were persons less promising offered employment first? This is the critical question in an assessment of the existence of discrimination. Data on the presence of discrimination so defined must be developed for employers and for whole industries and trade unions. Where discrimination exists, the best means should be used to eliminate it -- as judged by experiment.

B. Theoretical and Empirical Studies

One of the major studies of employment discrimination is a book by Frances Reissman Cousens entitled Public Civil Rights Agencies and Fair Employment: Promise vs. Performance (New York, Praeger, 1969). The study is a rather detailed look at several industries and localities. One of the main recommendations is that if groups charged with enforcing equal opportunity in employment are to be effective, they must take it upon themselves to investigate and gather data on whole industries to learn the practices of each. Merely responding to a few complaints to see if the white persons (preferred group) was really better qualified for the job was seen as a wholly inadequate approach. What is needed

is a much more systematic collection of data on racial mixture in the industry and actual job requirements.

The point is also made that while quotas cannot be used to measure discrimination, many employers can find qualified minority group members when pressed to do so (i.e., when costs of discriminatory practices rise in terms of government sanction, public image, etc.). When pressed, employers are motivated to be more creative in their recruiting methods. The author, Cousens, is convinced that pressure is the only way to bring change. Data showed that after 10 or 20 years of effort to enforce statutes or ordinances prohibiting employment discrimination, much discrimination continues to be practices. The author feels Fair Employment legislation is necessary for equal opportunity but by itself will not bring such equality into reality. Cousens also makes the point (p. 112) that performance tests and general education requirements are quite irrelevant for many kinds of jobs. He claims this is backed by a "broad consensus among personnel managers" and the results of his California survey.

The recommendation that agencies study discriminatory patterns on an industry-wide basis can, in view of the researchers (p. 117): 1) let employers see the agency in a role other than that of investigating a specific case for evidence of discrimination; 2) develop data on practices which show problems in need of resolution for the sake of both employer and job-seeker; 3) increase the influence of the agency over employers and unions and create a more positive and realistic image of minority-

group members. Enforcement agencies must, according to Cousens, "cease regarding the complaint process as their single legal responsibility and reallocate their financial and manpower resources." (P.124) Agencies should also share more information. This would encourage some to try what others found successful and would "avoid needless mistakes and duplication of efforts."

One of the best studies of discriminatory hiring requirements found during research for this report is one published in 1970 by the New York University School of Commerce in cooperation with the Manpower Administration of the U.S. Department of Labor titled, Industry Hiring Requirements and the Employment of Disadvantaged Groups (see Bibliography). The study looks at the following occupations: bank teller, cashier-checker, hotel clerk, auto parts sales person, shipping and receiving clerk, ore welder, press feeder, production machine operator, mineworker, and hospital orderly. Hiring requirements and practices are compared for the New York SMSA (Standard Metropolitan Statistical Area) and the St. Louis SMSA for each occupation, according to the following factors:

- Promotion Opportunities, Turnover, and Minority Groups
- Recruitment, Screening, and Age References
- Education Requirements
- Experience Preferences, Worker Traits, and Miscellaneous Factors.

The variability is examined: 1) within each industry in each SMSA, 2) between SMSA's, 3) between industry and Employment Agency hiring requirements and practices, and 4) between stated industry hiring requirements and the personal characteristics of employees. Also the validity

of specific hiring requirement guidelines are presented. Note that at the time the study was done, the economy was near full employment and there were many positions remaining unfilled.

In their discussion of the problem (Chapter II) the author points out that racial minorities, the undereducated, low skilled, and teenagers suffered disproportionately from unemployment (p. 23). In November, 1968, the overall unemployment rate was 3.3%. The same rate for teenagers was over 12%; for non-white workers of all ages, 6.5%; and for school dropouts in 1967, 15.9%. These groups suffer disproportionately not only from unemployment but also from underemployment. The 1968 Manpower Report of the President said that about a million workers -- mostly non-white and young -- may spend half or more of a given year in idleness. Of those who find regular or parttime work, many are forced to take jobs below their abilities.

Regarding problems related to hiring requirements, the study points out the following: (p.25)

> ". . . [L]ittle is known about how hiring requirements are derived from job description data. It is safe to say, however, that the process is a subjective one, usually involving the personal judgments of a personnel specialist, the supervisor-foreman, or other knowledgable individuals. In many instances, particularly for low-skilled entry jobs, the setting of hiring standards may be a totally informal procedure. Equally important, there is little predisposition on the part of employers to systematically validate hiring requirements in terms of job performance.
>
> "Typically, hiring requirements are established at a given time -- usually at the time the job was created -- and then perpetuated or modified by the bias of a succession of eimployment personnel. In many instances,

> the original requirements may be no more than a supervisor's notion of the kind of employee needed. Occasionally, the establishment of hiring standards is motivated by a desire to raise the 'tone of the business,' in the sense of some standard of sociability, e.g., emphasis on the high school diploma. . . . In the understandable desire on the part of every employer to 'get the best people he can,' some inconsistency may develop between the profile of employee characteristics that an employer may require and those that are necessary for successful job performance."

The study also points out that most of the disadvantaged workers will continue to have limited skills, and employment for them must be found at low-skilled, entry-level jobs. More realistic hiring requirements can be a major force in achieving employment for such people. Increasing skills and education among members of the work force is a more long-range goal and one that may not be necessary for production. The employer, also, may benefit from more realistic hiring requirements, according to the study. Such benefits may be the following:

1. Lower wage costs since lower-skilled persons bid lower in the labor market.

2. Greater productivity since worker traits more nearly fit the job to be performed (e.g. aptitude, interest, temperament, personality, and physical capacity.)

3. A less restricted supply of labor. The resulting improvement in the allocation of labor resources benefits the entire economy and may reduce prices. (p.27)

It appears that many employers have learned the disadvantages of hiring overqualified persons when the potential employee is grossly overqualified but have not seen the same disadvantages when the job applicant is less overqualified. When many Ph.D.s in technical fields were let go in Seattle and other cities with a slow-down in military

hardware and the SST, these people reported difficulty getting jobs with lower skill requirements. Employers felt sure these men would only leave when the better jobs for which they were trained became available. The time spent training them in company procedures and policies would then be lost. There are similar advantages in hiring persons without a high school education since they are less likely to move on to other jobs for which higher educational levels are necessary.

An argument frequently made by employers for raising qualifications (or not lowering them) is that the man is being hired for a career with the company -- i.e., with promotion in mind -- and not just for the entry-level job. They explain that the entry-level jobs are necessary in their training value to the employee. However, only a small percentage of the employees hired at lower levels can actually be promoted. In the study of New York and St. Louis, workers in most of the occupation-industry groups had less than one chance in ten of being promoted within two years (p. 3).

Findings on education requirements in the New York-Louisville study revealed that in general industries were "quite specific and detailed in their education requirements." However, there was "considerable variations as to the education levels believed necessary for successful job performance" for a given occupation. This was true both within and between SMSAs. For example, the minimum level of education for hotel clerks in various hotels was (roughly) as follows in terms of percent of establishments surveyed in the SMSA:

| Minimum Education | % in NYC | % In St. Louis |
|---|---|---|
| High School Diploma | 20 | 50 |
| Some High School | 20 | 30 |
| Eighth Grade or not sure | 20 | 20 |
| No Minimum | 40 | |
| Total | 100 | 100 |

"In 17 out of 20 occupation-industry groups, years of schooling were unrelated to measures of job performance. These findings suggest that a wide spectrum of industry may be overstating their education requirements." (p. 9) The primary reasons workers remained on the job was enjoyment of the work. The authors suggested that "worker tracts such as aptitude, interest and/or temperament and personality might be the principal determinants of job success." Evaluation of such traits, however, should be more objective than the informal means such as the personal interview, which is wide open for bias. What is suggested is a probationary or trial period as the most objective test of all.

One of the key recommendations of the study is that employers should be encouraged to "establish simple validation procedures" so that hiring practices can be periodically validated in terms of job performance. It is suggested that the cost of such an evaluation system would be more than offset by the savings from more realistic requirements.

C. Discrimination in the Labor Market

Current work dealing with the economic theory of discrimination

is based almost entirely on the work of Gary S. Becker.[1] The focus of Becker's analysis is on individual tastes, particularly as they systematically discriminate against some group on the basis of non-economic criteria. In the context of Becker's theory the term "taste for discrimination" implies a desire on the part of some individual or group to disassociate himself or themselves from some other person or group or to confine the latter to a subordinate position or group. Consequently in his analysis, discrimination is a restrictive practice which in the labor market interrupts free trade between people and groups. The central proposition in Becker's theory is that, "If an individual has a taste for discrimination, he must act as if he were willing to pay something either directly or in the form of a reduced income to be associated with some persons instead of others. When actual discrimination occurs, he must, in fact, either pay or forfeit income for this privilege." (Becker p. 6) In other words, the discriminator must lose or forego income when he discriminates.

Consequently, within the context of the labor market, Becker's analysis implies that the traditional theory of employment must be expanded beyond simple profit maximization as the guiding force underlying decisions relating to recruitment and to hiring (and to firing). Simply put, orthodox theory states that if revenue can be increased to a greater extent than cost by the addition of another employee, then additions to employment should be undertaken; and selection of employees should be undertaken on the base of the difference between increased revenues and costs. Those applicants making the greatest contribution to net revenues

[1] Gary S. Becker, The Economics of Discrimination. University of Chicago Press, Chicago 1957.

(gross increase in revenues less the gross increase in cost associated with the addition of an employee being hired first and the process continuing until the change in net revenues is zero. The import of Becker's analysis is the implication that the theory of employment should be placed in the broader context than simple profit maximization. People should be considered as being hired (and presumably fired) on the basis of more generalized "utility" or welfare considerations. Utility or welfare consideration include, in addition to the simple dollar profit and wage income considerations, nonmonetary income -- the satisfactions provided by the job and its circumstances which are not incorporated in the profit statement or pay check but rather related to the preferences, tastes and comforts of employers and employees.

The task then is to consider employment decisions, especially as they are related to considerations other than profit maximization, within the context of generalized welfare analysis which included nonmonetary as well as monetary income considerations. In order to employ this framework in the analysis of discriminatory behavior, we must be able to say that in addition to money income, there are other nonmonetary factors associated with the work situation which are desirable. These would include all those things which a person would prefer more of rather than less e.g., prestige, security, health, friendship, etc. In addition, a person must be willing to substitute among these nonmonetary variables, and between them and monetary income. While it should be practically impossible to stipulate the terms of trade between monetary and nonmonetary variables, it can be stated that whatever the preferences of

an individual may be, the less he must pay for any one of these, the more of it he will utilize.

The importance of these principals are the insights they provide into labor market behavior when labor market activities are constrained by institutional arrangements. Essentially they allow for an analysis of labor market behavior that is more comprehensive than the simple text book profit and income maximization. The maximization principal of behavior is maintained but in addition to monetary values, nonmonetary income is included.

In the current context, one kind of nonmonetary income is the indulgence of one's taste in and preferences for the kinds of people with whom one prefers to associate or employ. Clearly this is the principal point of Becker's analysis. People are willing to exchange or at least forego some monetary income in order to satisfy their taste, in this case to discriminate. However, in the case of discrimination as with all preferences, the more favorable the terms on which one can realize his preference, the greater the extent to which one will indulge his preferences. For public policy then the important element for our analysis is the terms of trade between monetary and nonmonetary income.

In the private market, employment policies will reflect monetary-nonmonetary income maximization. Assume an employer prefers young, white, educated and sociable employees. If two applicants or perspective employees are equally productive but one is a middle aged black, the other will get the job. Given equal cost and productivity, the employer by discriminating in favor of the applicant whose personal and social

characteristics are compatible with his taste can, at no cost of monetary income, i.e., no difference in his profits, increase his nonmonetary income. It is, however, at least conceptually possible that monetary-nonmonetary income maximization on the part of the employer could lead to the hiring of the less preferred applicant. In a labor market free of legal constraints and contractual obligation on wage policies, the less preferred applicant could compensate the employer for his preference by agreeing to contract for employment at a wage lower than that of equally productive but preferred applicants. As the less preferred applicant is of equal productivity, his agreement to accept employment at a lower wage results in relatively higher monetary income -- profits -- for the employer. Depending on the relative wage demands between the preferred and less preferred applicants and the strength of the employers discriminatory preferences, it is possible, that the relatively greater monetary income would be sufficient to compensate the employer for his discriminatory preferences.

D. Institutional Interference

In the foregoing, discussion has considered preferences in a general sense and the focus has been on the monetary-nonmonetary income or profits of employers. The analysis must be extended to recognize that those to whom profits accrue (at least directly) are seldom those who either set hiring standards or do the actual hiring. With the exception of the operations of independent proprietors, ownership and management are separate functions generally performed by different groups of people. While the separation of ownership from management is particularly obvious in the large corporation, even in smaller

. . . firms the functions of management -- particularly personnel -- tend to be performed by employees rather than owners.

The importance of the separation of the ownership from the management function is its effect on the terms of trade between monetary and nonmonetary income of the personnel (non-owners) directly involved in the hiring procedure. It was argued above that in a free market, disadvantaged groups could (at least attempt to) offset any prejudice against them by offering compensating advantages. If those involved in the hiring decision and therefore those in a position to act on discriminatory preferences, receive salaries rather than having incomes which vary with small changes in the firm's profits, the compensatory offsets of reduced wage costs will not directly alter the nonmonetary income of those making hiring decisions. Consequently even if there were no restriction on individual wage bargaining in the labor market, the fact that salaries of employees involved in hiring are not directly related to profits prevents the disadvantaged group from altering to their favor the monetary-nonmonetary terms of trade.

Thus while this latter group cannot increase their monetary income by hiring lower cost employees, they can increase their nonmonetary income by operating on the basis of their personal taste and preference -- i.e., hiring preferred types. The cost of discrimination (to the discriminator) is reduced and the employer's terms of trade is shifted against less preferred groups.

Similarly this is the case with government or privately operated organizations which are nonprofit. Since the people associated with the

institution, whether they be the administrators or the personnel in charge of hiring, could not directly appropriate compensatory offsets (unless they take the form of bribery) as profits or higher salaries, the inducement to increase "operating profits" is nonexistent. In a nonprofit organization all 'income' must be used to cover operating expenses. In fact in many operations particularly governmental, an excess of 'income' over cost may lead to a reduction in income (appropriations). Consequently, and as a result of the restraints placed on the monetary incentives in nonprofit organizations, the terms of trade favor nonmonetary over monetary sources for increased incomes. Therefore in nonprofit operations, it would be expected that a greater emphasis will be placed on employment sources of personal satisfaction than in a profit oriented operation.

Thus we have identified institutions which are likely to have discriminating effects on the job market. Those practices which place restrictions on the monetary income received prevent discriminators from collecting the income difference that could be offered them; this makes it difficult for the disadvantaged group to offset prejudices. We have argued that these restrictions are most forceful where profits accrue to owners rather than to the salaried personnel, when the latter rather than the former are the ones who directly participate in the selection of employees. Similarly in nonprofit or operations where regulation on the monetary income (profit) of the organization preclude the effectiveness of compensatory offsets.

In addition to contractual and institutional arrangements, other factors -- specifically labor market conditions -- may affect the terms of trade between the monetary and nonmonetary components of income. Under tight labor market conditions, when the number of job vacancies is roughly equivalent to the number of unemployed, jobs look for people. With regard to discrimination, this phenomena has generally been discussed within the context of "last hired first fired" or the queueing theory of employment.[1] According to the queue theory, applicants or potential employees are arrayed along a continuum in order of their desirability to the employer. To a nondiscriminating employer, workers would be ranked within the queue on the basis of objective criteria solely, i.e. productivity and costs. However, in the case of those employers with discriminatory preferences, subjective elements such as prejudices will alter the objective ranking.

In either case, employers will select workers from as far up the queue of applicants as possible. However, as labor demands expands, the supply of preferred workers will decline as more of this preferred group are hired. If the less preferred group is concentrated at the lower end of the queue, the less preferred group's employment situation will be sensitive to the level of demand for labor. Of course, members of the less preferred group could alter their rank in the queue by offering compensatory offsets if that were allowable. However if such procedures are prevented, whether by custom, law or institution, their

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[1]Lester C. Thurow, Poverty and Discrimination, The Brookings Institution, Washington, D. C. 1969.

rank will be at the lower end of the queue and for reasons other than productivity they will tend to be the last to enter the ranks of the employed. Similarly during times of slack labor market conditions, the less preferred group will tend to be the first fired.

The situation becomes particularly aggravated if, as is the usual case, there is a prohibition against employers increasing their incomes by accepting compensating offsets and wages tend to be stationary rather than declining under slack labor market conditions. If the slack in the labor market is a generalized phenomena, the position of the less preferred in any job queue should deteriorate as shifting among employment queues occurs. Thus, during time of down turn in the business cycle, it would be expected that the unemployed members of the preferred group will seek a place within the queues for jobs which to them are less preferred. Moreover, as unemployed members of preferred groups take places in lower level queues, the less preferred groups will be pushed to lower ranks within each queue. If wage rates are downwardly inflexible, the employer will be faced with a large queue from which to select employees. Of course if wages were downwardly flexible, the decline in the offered wage rate would eventually reduce the supply of applicants to the point of equilibrium with demand. However, when wages are not downwardly flexible and if compensatory offsets are not available, the rationing of jobs among applicants will be achieved on the basis of considerations other than their wage and productivity. The converse is true. During conditions of tight labor markets, the use of criteria in hiring other than wages and productivity will decline as the number of unemployed preferred group

members decline. Consequently the placement of the less preferred both within and among queues should improve in times of high employment.

E. Dealing With Discrimination

What is required and what in many cases is the strength of anti-discrimination legislation are those provisions which change the terms of trade between monetary income and nonmonetary satisfactions associated with activities which are directed by discriminatory preferences. While policy statements can define licit and illicit sources of monetary and nonmonetary income, it is the provision of sanctions --whether fines, imprisonment, contract cancellations, etc. which can increase the cost of discriminatory activities.

It should be recognized, however, that to be effective, sanctions must increase the cost of discrimination to the actual discriminators. Thus if a firm or company as a course of action operates in a discriminatory fashion, the threat of legal sanctions to their profits may be sufficient to induce the firm or company to forego discriminatory policies. However, to be effective, sanctions must be levied on those for whom discriminatory activities are a source of nonmonetary income. Thus, while the discriminatory activity may take place within the confines of some firm, company or organization it is possible that sanctions directed at the firm or organization itself may not be directly effective.

Sanctions as a method of increasing the cost of discrimination will be most effective when applied to those actions based on preferences which

are, by generally accepted standards, clearly not related to measures of ability. This would include virtually all forms of overt discrimination such as age, sex, religion, race, marital status, physical appearance, social activities, political affiliation, etc. Moreover the sanction approach will be most effective at that level and in those organizations where institutional arrangements set limits on the income of those with discriminatory preference.

Sanctions insofar as they increase the cost of discrimination to the actual discriminator can be effective regulatory devices. However, beyond the obvious forms of covert discrimination, i.e. decisions based on criteria related to employee or applicant characteristics that are widely recognized and generally accepted as non-ability related, they can be applied only with great difficulty.

Much of what must be considered as covert discriminatory activity can be associated with the inappropriate application of ability-related criteria or measures, e.g. educational or experience requirements, intelligence, skill and dexterity tests, rather than the application of nonability-related criteria. The problem in regulating discriminatory actions associated with standards and criteria which are based on widely accepted preferences is that of detection. As such standards or criteria are related to actual job requirements, detection of discrimination would necessitate an evaluation of the difference between actual requirements dictated by the nature of the work and those embodied in the standards and criteria applied in the employee selection process as well as those applied to application procedures. Clearly, the

difficulties and cost involved in such an evaluation for all the employment positions within a good size firm let alone for the overall economy of a state or the nation would be overwhelming. However, in spite of the magnitude of such an undertaking, preliminary investigations of education and training requirements for efficient employee operations have been defined on a national average basis for Census defined occupations.[1] One striking indication of this and related work is that there is a general tendency for the years of education and training required on the part of the employee to be greater than that necessitated by the nature of the work in virtually every occupation. Moreover, there appears to be a tendency for the worker education and training requirement to increase over time. One interpretation of these findings given by the investigator was that, "The gloss (of social status) is an important product of the educational process in America, and more importantly in a transitional period these new and expanding occupations, especially in the so called service sector, not surprisingly are likely to be miscast in terms of their 'true' educational requirements."[2] (Parenthesis added.) It should be noted, however, that while the implication of rising educational and training requirements in expanding occupations may, as implied by the author of the statement, be representative of the discrimination desires of those involved in that occupation, the ability to increase requirements effectively depends on the number of job vacancies

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[1] R. S. Eckaus, "Economic Criteria for Education and Training," Review of Economics and Statistics XLVI (1964), pp. 181-190.

[2] Ivor Berg, Education and Jobs: The Great Training Robbery, Praeger Publishers (1970) New York, p. 57.

in that occupation relative to the supply of applicants with the knowledge and skill which are actually required by the nature of the work.

The problem with selection criteria that indicate the worker abilities required by the job is the difficulty of determining the extent to which they have been altered or inflated by discriminators' preferences. The desires of employers to "upgrade" the "quality" of their work force, especially if that can be accomplished at little or no cost, would appear to be rational and a policy which seems to be generally accepted. However, it is just such upgrading of the work force, when not undertaken as a result of an increase in the skills necessary to do the work, which will prevent qualified individuals from obtaining work at the levels of their capabilities. Clearly the ability of employers to upgrade hiring standards will depend on the relative tightness of the labor market. If there are a large number of alternatives open to those seeking employment, i.e. the labor market is tight, the employer by upgrading hiring requirements is likely to reduce the number of potential applicants from which he can draw. In fact it is during times of tight labor markets that employers are likely to lower their hiring standards -- often even if it requires providing specialized training at their own expense. However (as stated above in the discussion of the queue theory of the labor market), if the market is slack and there exists a relatively large pool of potential applicants and employees, the employer can increase hiring standards and can (at little or no cost) select from all those having the ability and skills to perform the work, those applicants

which have preferred qualities. Clearly the imposition of standards based upon such preference, insofar as they do not directly coincide with work requirements, is an activity which must be termed discriminatory.

With this variety of discrimination, the regulatory problem is, as it was in those previously discussed, one of altering the hiring body's terms of trade between monetary and nonmonetary income. However, the problem differs in that now the preferences which give rise to nonmonetary income are associated with work-related criteria rather than nonwork-related worker characteristics. Earlier it was argued that sanctions such as fines would be appropriate to the latter. For the former, it will be argued that the most efficient method of altering the monetary-nonmonetary terms of trade in favor of the less preferred group will be by means of positive incentive.

The rationale underlying the difference in recommendations is simple and arises out of the underlying difference in the nature of the preferences involved (which in actuality may be more a matter of social acceptability of different types of preferences.) Generally social acceptability has been conferred upon preferences which are concerned with personal or worker attributes which are related to education, skills, ability or just about anything which can be interpreted as being related to productivity. However, preferences about personal characteristics which do no relate to skills, abilities, and productivity of people while tolerated by society are generally assumed to have no legitimate place in decisions related to production and employment. Consequently it would seem that positive incentives would in essence provide rewards,

e.g. increased monetary incomes, to those with discriminatory preferences of this type. Rather it would seem that as the social emphasis is to discourage such preference and particular activities directed by them, penalities rather than reward would be appropriate.

The situation with education, ability, skill, and other related preferences is different. Our social mentality and even our social policy is based on a preference for more rather than less of these. The problem in this area is what to do about those people who possess relatively less rather than more of these preferred traits. The policy problem is that of neutralizing the discriminatory labor market effects of generally accepted preferences.

It was argued earlier that in the absence of institutional controls on wages and salaries, less preferred workers could, by offering compensatory offsets, alter discriminator's monetary-nonmonetary income in terms of trade to their favor and thereby obtain employment. In the presence of institutional restrictions which preclude such activity, it would seem that direct subsidies to employers would be both a socially acceptable and efficient way of altering the terms of trade in favor of less preferred groups. Moreover, to the extent that an incentive policy is successful, it would increase the work experience of the less preferred and consequently make them more preferred.

Incentives or subsidies in these cases would be easier to administer than sanction. Generally the imposition of a sanction places the burden of proof on the body which has the power to impose it.

While proof is almost always difficult to muster, that required to substantiate the imposition of discriminatory hiring standards which are work-related insofar as it would require an evaluation of the actual work requirement by the investigating body would be especially difficult. Positive incentive or subsidies, however, place the initiative on the discriminator rather than the body in charge of regulating discriminatory hiring procedures. In addition, positive incentives or subsidies have an ex ante nature in that they can be used to induce the desired activity. Sanctions, however, are of an ex post nature and can be imposed only after the fact.

While there are a variety of forms which such incentives could take, it seems that direct money payments to those who have complied with the anti-discrimination program would be preferable to the usually suggested alternative -- tax rebates.[1] The superiority rests on cost consideration. One important element of an incentive program is that the burden of proof falls on those who wish to receive the incentive payment rather than on the regulatory body. Again, to be effective, the regulatory device must alter the monetary-nonmonetary income terms of trade of those who actually are in the position to discriminate. However, as financial incentives of this variety could be alloted only after certification that the desired activities have been undertaken, it would seem that they could be attributed directly to the firm or

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[1]Daniel M. Hilland, "An Evaluation of Tax Incentives for on the Job Training of the Disadvantaged" The Bell Journal of Economics and Management Science (Spring,1971) Vol. 2, No. 1, pp. 293-327.

organization and the standards for qualification. Clearly if it is in the financial interest of the firm to follow such a policy, if the criteria for qualification included a policy statement on the part of the organization to the effect that applicants would be evaluated on their possession of credentials, individual employees deviating from nondiscriminatory practices would violate not only company policy but also government regulations -- in which case sanctions could be applied to those in the organization who are responsible for the discriminatory activity.

The difficulty with a program of this variety is that it requires that employers be able to evaluate the abilities of potential workers. To a large degree, credentials and certification of various types have generally been used for this purpose. S.M. Miller has argued that the way to surmount the discriminatory effects associated with the use of credentials -- particularly those related to education -- is to make such credentials available to virtually everyone. This would not seem to rectify the situation in that neither would it facilitate the employers selection procedures, which the use of credentials apparently are believed to do, nor would it satisfy discriminatory preferences. A preferable alternative would seem to be one which attempted to deal with both of these problems. Some small attempt has been made in the foregoing to indicate the general type of policies which are likely to neutralize discriminatory preferences. The reliance on credentials as indicators of skill could be counter-balanced by a policy which provided incentives

to employers to employe people who lack the credentials. That is, make it profitable for firms to employ members of less preferred -- or where credentials are concerned -- disadvantaged groups.

## III. SUMMARY OF RECOMMENDATIONS

A. Current statutes prohibiting blatantly discriminatory practices must be aggressively enforced. In terms of our model, the use of information clearly not related logically to the probability of satisfactory performance must be eliminated as a part of the assessment of an applicant's "acceptability."

To implement this it is suggested that:

1. enforcement agencies investigate and gather data on whole industries to learn the practices of each.
2. enforcement agencies investigate industries suspected, on the basis of available evidence, of blatant discrimination. Evidence should go beyond number of actual complaints to include data on genuine and uniform application of fair employee qualifications. That is, it should be learned whether fair qualifications, as they exist on paper, are actually applied uniformly to all applicants. An example of using blatantly discriminatory information would include asking a person's race on a job application.
3. enforcement agencies share their information more widely to avoid duplication and to make enforcement more effective.

4. enforcement agencies use punishment (as opposed to rewards) in dealing with employers who prefer employee characteristics not at all related to job performance.

B. Employers must improve their means of predicting ability of an applicant to perform the work satisfactorily. In terms of the model, tests must be developed which can place an individual below the "acceptability level" only if he is very likely to fall below the "satisfactory level" in performance.

To implement this it is suggested that:

1. employers be encouraged to question the value of requiring certain "credentials" of their employees. Are all of the skills the credential implies really necessary for satisfactory job performance? If not, the employee may be over-qualified or qualified for something other than what he was hired to do.
2. employers be encouraged to hire employees which do not meet current minimum standards on a "probationary" basis to evaluate actual performance.
3. Data on each employee's rating before hire and similar data on performance after a given period(s) of time be maintained and the two sets of data compared for all groups protected by Title VII of the Civil Rights Act of 1964, to determine validity of the pre-hire qualifications.

4. Various incentives to employers such as employer education, be tried and evaluated to ascertain which is most effective in causing employers to spend the time and money to evaluate and improve their hiring procedures.
5. an effort be made to rate performance in terms of both quality and quantity in an objective fashion (an admittedly difficult task).
6. a government agency act as a storehouse of the above types of data especially for occupations which are fairly standard in terms of performance requirements across an industry. This would enable new or small employers to gain from the experience of older and larger employers.
7. trade unions be encouraged to accept revised hiring standards and performance measures.

C. Employers must be educated about the economic cost to them of restricting their supply of labor unnecessarily. This is a means of motivating employers to develop information on real employee qualifications and valid testing methods. Over-qualified people cost more to hire.

To implement this it is suggested that:

1. high schools and colleges be encouraged to include such materials in their curricula.

2. institutes for personnel officers be established or used to educate people who make hiring decisions.
3. indiscriminate "upgrading" of employees be discouraged if the work has not changed so as to warrant it.

D. Employers should be encouraged to provide on-the-job training for employees -- especially if skills are easily taught and learned. This would allow tapping a larger labor pool -- those just below the "acceptability" level. Such training might also lead to a credential of some type.

E. Enforcement agencies should allow evaluation of an employee only with respect to the entry-level job. All entry-level people cannot be promoted, so those who are qualified and would like to remain near their entry level should be allowed to work. Employers should be made to realize that this is in their self-interest as well.

## IV. APPLYING THE DEFINITIONS AND THE MODEL

The purpose of this study has been to review the major follow-up studies in employment discrimination, to define such discrimination, to recommend means of eliminating such discrimination, and to chart a course for future study and application. Now that we have presented these sections of our work, we propose that we devote the next year of work to the special study of one or two occupations. We would gather the relevant data on hiring practices in that occupation, put that data into our model, and recommend precise guidelines for what

constitutes discrimination in that occupation, including recommended tolerances. In sum, then, we would apply the model. We would then explore the possibility of a more general application of the model to other occupations.

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